

1 HB106  
2 123897-2  
3 By Representative Clouse  
4 RFD: Commerce and Small Business  
5 First Read: 01-MAR-11

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8 SYNOPSIS: Currently, the Alabama Department of  
9 Environmental Management administers, regulates,  
10 and enforces environmental laws of the state,  
11 including the issuance of a range of civil  
12 penalties for certain violations.

13 This bill would remove minimum penalty  
14 amounts for certain violations and would limit the  
15 assessment of the penalties for violations subject  
16 to monthly reporting based on average compliance to  
17 not more frequently than once a month.

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT  
22

23 Relating to civil penalties assessed pursuant to  
24 Section 22-22A-5, Code of Alabama 1975, for violations of  
25 state environmental protection laws and orders; to amend  
26 Section 22-22A-5, Code of Alabama 1975, to remove minimum  
27 penalty amounts for certain violations and to limit the

1 penalties for violations subject to monthly reportings based  
2 on average compliance to monthly intervals.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 22-22A-5, Code of Alabama 1975,  
5 is amended to read as follows:

6 "§22-22A-5.

7 "In addition to any other powers and functions which  
8 may be conferred upon it by law, the department is authorized  
9 beginning October 1, 1982 to:

10 "(1) Administer appropriate portions of Sections  
11 9-7-10 through 9-7-20, which relate to permitting, regulatory  
12 and enforcement functions; administer and enforce the  
13 provisions and execute the functions of Chapter 28 of this  
14 title; Chapter 22 of this title; Article 2 of Chapter 23 of  
15 this title; Chapter 30 of this title; appropriate portions of  
16 Article 1 of Chapter 27 of this title; Sections 22-24-1  
17 through 22-24-11; Sections 22-25-1 through 22-25-15; and  
18 Sections 22-36-1 through 22-36-10.

19 "(2) Acting through the Environmental Management  
20 Commission, promulgate rules, regulations and standards in  
21 order to carry out the provisions and intent of this chapter;  
22 provided, however, that prior to the promulgation of any state  
23 primary or secondary drinking water standard governed by  
24 Sections 22-23-30 through 22-23-53 or any regulations dealing  
25 with hazardous wastes governed by Sections 22-30-1 through  
26 22-30-24, the department shall receive the approval of the  
27 State Board of Health. The State Board of Health shall provide

1 the department a response to its request for approval within  
2 60 days of receipt of such request unless such other time is  
3 mutually agreed upon by the department and the State Board of  
4 Health.

5 "(3) Acting through the Environmental Management  
6 Commission, adopt and promulgate rules, regulations and  
7 standards for the department, and to develop environmental  
8 policy for the state.

9 "(4) Consistent with the provisions in subsection  
10 22-22A-4(n), serve as the State Agency responsible for  
11 administering federally approved or federally delegated  
12 environmental programs.

13 "(5) Serve as the state's clearinghouse for  
14 environmental data. The clearinghouse shall be developed in  
15 coordination and cooperation with other governmental data  
16 collection and record keeping systems to provide for an  
17 inventory, and for the cataloguing and dissemination of  
18 environmental information.

19 "(6) Report, as appropriate, to the Governor and to  
20 the Legislature on the programs and activities of the  
21 department and to recommend needed changes in legislation or  
22 administrative practice.

23 "(7) Develop, conduct and disseminate education and  
24 training programs. Pursuant to this authority, the department  
25 shall establish a citizens' advisory committee to provide  
26 input into such education and training programs.

1           "(8) Enter into agreements and contracts, where  
2 appropriate, with other state agencies, the federal government  
3 or private individuals, in order to accomplish the purposes of  
4 this chapter.

5           "(9) Establish and maintain regional or field  
6 offices in order to provide more effective and efficient  
7 services to the citizens of the state.

8           "(10) Issue, modify, suspend or revoke orders,  
9 citations, notices of violation, licenses, certifications or  
10 permits.

11           "(11) Hold hearings relating to any provision of  
12 this chapter or relating to the administration thereof.

13           "(12) Enforce all provisions of this chapter and all  
14 provisions of law identified in subdivision (1) of this  
15 section and to file legal actions in the name of the  
16 department and to prosecute, defend or settle actions brought  
17 by or against the department or its agents. The Attorney  
18 General shall represent the department in any and all legal  
19 actions brought by the department to enforce any provisions of  
20 this chapter; provided however, that if, within a reasonable  
21 time after the department refers the matter to him, he fails  
22 to file any such action, then the department may commence  
23 appropriate legal action. Nothing in this subdivision shall be  
24 construed so as to impair the authority of the Attorney  
25 General to independently enforce the provisions of this  
26 chapter.

1           "(13) When necessary to achieve conformance with  
2 Sections 9-7-10 through 9-7-20, acquire fee simple or less  
3 than fee simple, interest in land, water and other property  
4 under the procedures of Title 18 or other means; provided,  
5 however, that such power shall not apply to property and  
6 interest therein which is devoted to public use.

7           "(14) Apply for, where appropriate, accept, receive  
8 and administer grants or other funds or gifts from public and  
9 private agencies, including the federal government, for the  
10 purpose of carrying out any of the functions, purposes or  
11 provisions of this chapter or any of the functions or  
12 provisions transferred to the department by this chapter.

13           "(15) Employ such professional, technical, clerical  
14 and other workers including attorneys and special counsel, and  
15 such consultants as are necessary and within available funds  
16 to carry out the purposes of this chapter.

17           "(16) Adopt rules and regulations relating to  
18 charging and collecting fees sufficient to cover the  
19 reasonable anticipated costs to be incurred by the department  
20 and directly related to the issuance, reissuance, modification  
21 or denial of any permit, license, certification or variance,  
22 such fees to include, but not be limited to, the reasonable  
23 anticipated cost of the examination and processing of  
24 applications, plans, specifications or any other data and any  
25 necessary public hearings and investigations; provided,  
26 however, that nothing in this subdivision shall be construed  
27 as modifying or affecting the provisions of Section 22-24-5. A

1 schedule of estimated reasonable anticipated costs shall be  
2 appended to rules and regulations with the understanding that  
3 fees may be higher or lower on a case-by-case basis.

4 "(17) In addition to any other remedies provided by  
5 law, recover in a civil action from any person who has  
6 violated, or threatens to violate, any provision of this  
7 chapter, or any provision of law identified in subdivision (1)  
8 of this section, or any rule or regulation promulgated  
9 thereunder, or any order, or condition of any permit, license,  
10 certification or variance issued by the department pursuant  
11 thereto, the actual costs reasonably incurred by the  
12 department to prevent, minimize or abate any adverse effect on  
13 air, land or water resources which results or may result from  
14 such violation. Such civil actions may be filed in the circuit  
15 court of the county in which the defendant resides or does  
16 business, or in which the violation or threatened violation  
17 occurs or in which the adverse effect occurs.

18 "(18)a. Issue an order assessing a civil penalty to  
19 any person who violates any provision of law identified in  
20 subdivision (1) of this section, any rule, regulation or  
21 standard promulgated by the department, any provision of any  
22 order, or any condition of any permit, license, certification  
23 or variance issued by the department, provided however, that  
24 no such order shall be issued to a person:

25 "1. If a civil action to recover a penalty for such  
26 violation has been commenced against such person as provided  
27 in paragraph b. of this subdivision.

1           "2. For any violation at a coal mining operation  
2 regulated under Sections 9-16-70 through 9-16-107 or Title V  
3 of Public Law 95-87, 30 U.S.C. § 1251-1279.

4           "3. If an order assessing a civil penalty for such  
5 violation has been issued to such person pursuant to  
6 subdivision (2) of subsection 22-28-23(b).

7           "4. Who is a responsible corporate officer subject  
8 to a civil action for the recovery of a penalty under  
9 paragraph b. of this subdivision.

10           "The department shall commence enforcement action  
11 under this paragraph by notifying the person subject thereto  
12 in writing of the alleged violation and affording the person  
13 an opportunity for an informal conference with the director or  
14 his or her designated representative concerning the alleged  
15 violation and any proposed order. The informal conference  
16 shall not be subject to the procedures for hearings under  
17 Section 22-22A-7. Before issuing any consent or unilateral  
18 order under this section, the department shall cause public  
19 notice to be published for one day in a newspaper of general  
20 circulation in the area where the alleged violation occurred  
21 and on the website of the department for the duration of the  
22 comment period; provided, however, that unavailability of the  
23 website during the comment period shall not affect the  
24 validity of an order issued under this paragraph. The notice  
25 shall reasonably describe the nature and location of the  
26 alleged violation and the amount of civil penalty proposed,  
27 contain a summary of any proposed corrective measures, provide



1 instructions for obtaining a copy of the proposed order, and  
2 indicate that persons may submit written comments to the  
3 department and request a hearing on the proposed order within  
4 30 days of the first date of publication. The department may  
5 hold a hearing if the information submitted in support of the  
6 request is material and if a hearing may clarify one or more  
7 issues raised in the written comments. If the department  
8 grants a request for a hearing, the department shall provide  
9 written notice of the time, date, and location of the hearing  
10 by regular mail at least 20 days prior to the hearing to all  
11 persons subject to the proposed order and all persons who  
12 submitted written comments on the proposed order that contain  
13 a current return address. At any such hearing, the department  
14 shall provide a reasonable opportunity for persons subject to  
15 the proposed order and persons who submitted written comments  
16 on the proposed order to be heard and to submit information to  
17 the director or his or her designated representative,  
18 provided, however, that the hearing shall not be subject to  
19 the procedures for hearings under Section 22-22A-7, or  
20 practices or procedures governing public hearings. The  
21 department shall also accept additional written comments from  
22 any interested party that are received on or before the date  
23 of the hearing. After consideration of written comments, any  
24 information submitted at the hearing, if one was held, and any  
25 other publicly available information, the department may issue  
26 the order as proposed, issue a modified order, or withdraw the  
27 proposed order. Any order issued under this paragraph shall

1 include findings of fact relied upon by the department in  
2 determining the alleged violation and the amount of the civil  
3 penalty and shall be served on persons subject to the order in  
4 the manner provided for service of process in the Alabama  
5 Rules of Civil Procedure. Upon issuance of an order, the  
6 department shall also provide written notice of the order by  
7 regular mail to each person who submitted written comments on  
8 the proposed order that contain a current return address. The  
9 notice shall reasonably describe the nature and location of  
10 the alleged violation and the amount of civil penalty, contain  
11 a summary of any required corrective measures, provide  
12 instructions for obtaining a copy of the order, and indicate  
13 that persons who submitted written comments on the proposed  
14 order may, within 30 days of the issuance of the order,  
15 request a hearing on the order before the Environmental  
16 Management Commission in accordance with Section 22-22A-7.  
17 Where the department has issued an order finding that a  
18 violation has occurred and assessing a civil penalty, the  
19 person subject thereto shall, unless the department and that  
20 person agree on a different schedule, pay the penalty in full  
21 within 45 days after issuance of such order unless any person  
22 has filed a timely request for a hearing to contest the  
23 issuance of such order in accordance with Section 22-22A-7, in  
24 which case the penalty assessed in the order as approved or  
25 modified by the Environmental Management Commission shall,  
26 unless the department and that person agree on a different  
27 schedule, be paid in full within 30 days after the order is

1 approved or modified by the Environmental Management  
2 Commission or, if an appeal thereof is taken to circuit court,  
3 within 42 days after the court affirms the order as approved  
4 or modified by the Environmental Management Commission. Civil  
5 penalties assessed in an order under this paragraph and not  
6 paid as provided herein may be recovered in a civil action  
7 brought by the department in the Circuit Court of Montgomery  
8 County or the county in which the defendant does business.

9 "b. Commence a civil action in the circuit court of  
10 the county in which the defendant or any material defendant  
11 resides or does business or in which the violation occurred to  
12 recover a civil penalty from such person for any violation of  
13 any provision of law identified in subdivision (1) of this  
14 section, any rule, regulation or standard promulgated by the  
15 department, any provision of any order or any condition of any  
16 permit, license, certification or variance issued by the  
17 department, provided however, that no such civil action may be  
18 commenced against a person if an order assessing a civil  
19 penalty for such violation has been issued to such person  
20 under paragraph a. of this subdivision. Whenever such person  
21 is a corporation and the violation is of a provision of law in  
22 Chapter 22 of this title, or any rule, regulation or standard  
23 promulgated by the department thereunder, or any provision of  
24 any order or any condition of any permit, license,  
25 certification or variance issued by the department thereunder,  
26 the same civil penalties that may be imposed upon a person  
27 under this subdivision may be imposed upon the responsible

1 corporate officers in a civil action. Any person having an  
2 interest which is or may be adversely affected may intervene  
3 as a matter of right in any civil action commenced under this  
4 paragraph. The Attorney General may also commence a civil  
5 action under this paragraph.

6 "c. Any civil penalty assessed or recovered under  
7 paragraph a. or b. of this subdivision shall not ~~be less than~~  
8 ~~\$100.00~~ or exceed \$25,000.00 for each violation, provided  
9 however, that the total penalty assessed in an order issued by  
10 the department under paragraph a. of this subdivision shall  
11 not exceed \$250,000.00. Each day such violation continues  
12 shall constitute a separate violation for purposes of this  
13 subdivision. Any violation of a permit or other regulatory  
14 limit that requires reporting or disclosure according to a  
15 monthly average for compliance shall not be assessed more  
16 frequently than once per month and shall not exceed \$25,000  
17 per violation. In determining the amount of any penalty,  
18 consideration shall be given to the seriousness of the  
19 violation, including any irreparable harm to the environment  
20 and any threat to the health or safety of the public; the  
21 standard of care manifested by such person; the economic  
22 benefit which delayed compliance may confer upon such person;  
23 the nature, extent and degree of success of such person's  
24 efforts to minimize or mitigate the effects of such violation  
25 upon the environment; such person's history of previous  
26 violations; and the ability of such person to pay such  
27 penalty. Civil penalties may be assessed under this

1 subdivision for any violation occurring within two years prior  
2 to the date of issuance of an order under paragraph a. of this  
3 subdivision or commencement of such civil action under  
4 paragraph b. of this subdivision. All civil penalties  
5 recovered under this subdivision by the department or Attorney  
6 General shall be deposited into the State Treasury to the  
7 credit of the General Fund, except that portion which  
8 represents the reasonable costs incurred by the department or  
9 Attorney General to recover such penalties which shall be  
10 deposited to the credit of the operating fund of the  
11 department or Attorney General, whichever incurred such costs.

12 "(19) Commence a civil action in the circuit court  
13 of the county in which the defendant or any material defendant  
14 resides or does business or in which the threatened or  
15 continuing violation of any provision of law identified in  
16 subdivision (1) of this section, any rule, regulation or  
17 standard promulgated by the department, any provision of any  
18 order, or any condition of any permit, license, certification  
19 or variance issued by the department. The Attorney General or  
20 district attorney having jurisdiction in the circuit, county  
21 or territory in which the threatened or continuing violation  
22 occurs may also commence a civil action to enjoin such  
23 violation. In any such action, any person having an interest  
24 which is or may be adversely affected may intervene as a  
25 matter of right.

1                   "(20) Perform any other duty or take any other  
2                   action necessary for the implementation and enforcement of  
3                   this chapter."

4                   Section 2. This act shall become effective  
5                   immediately following its passage and approval by the  
6                   Governor, or its otherwise becoming law.